

shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins and destinations. These requirements also apply to amended contract summaries.

(b) [Reserved]

§ 1313.13 Contract summary content—other commodities or services not involving a port.

(a) Contract summaries for other commodities not involving a port must contain the commodity or commodities to be transported under the contract and the information required in § 1313.11(b) (1) and (4), and § 1313.10(b)(6). Paragraph (b)(7) of § 1313.11 is applicable only to the extent that service requirements are placed in the contract. These requirements also apply to amended contract summaries.

(b) [Reserved]

§ 1313.14 Informal discovery.

(a) Prior to filing a petition for formal discovery under 49 CFR 1313.15, a petitioner may request discovery from the carrier.

(b) The carrier must promptly grant or deny the request.

(c) Agreements between carriers and shippers for informal discovery are permitted under these rules.

§ 1313.15 Contract discovery.

(a) *Petition.* A petition to discover contract provisions must show that petitioner is a shipper or port, has standing to file a complaint under 49 U.S.C. 10713(d)(2) (A) or (B), and that petitioner is affected by the contract. The following information will be considered in making a determination on whether to permit discovery.

(1) *Standing.* Identify the provision(s) in 49 U.S.C. 10713(d) under which petitioner has standing to file a complaint.

(2) *Affected party.* An affected party is one that is an actual or potential participant in the relevant market. The following information is relevant to making that determination and should be provided.

(i) Nature and volume of petitioner's relevant business.

(ii) Relevant commodities petitioner ships or receives;

(iii) Comparisons between petitioner's commodities, locations of shipping facilities and serving carriers, actual or potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(iv) Showing of an ability to ship the commodity in question at a time generally simultaneous with the contract at issue.

(v) Any additional information petitioner considers appropriate to support its request, including prior negotiations, if any.

(vi) Demonstrate how and to what degree the petitioner's relevant business may be affected by the contract terms as disclosed in the summary.

(vii) Proof of actual injury is not required to satisfy this rule.

(3) *Demonstrated need.* (i) With regard to the grounds for complaint under 49 U.S.C. 10713(d)(2)(B), the demonstrated need test applies to contracts for forest products and paper, non-agricultural port traffic, and other commodities. The test does not apply to agricultural commodity contracts.

(ii) A petitioner seeking disclosure of non-agricultural contract information must show that the contract terms it seeks are relevant to its potential challenge to the contract.

(iii) As car data is published in the contract summary, a petition for further disclosure on the basis that the contract may impair the contracting carrier's common obligation must establish a nexus between the information sought and the common carrier obligation. Before information regarding special features will be disclosed, a petitioner must show how the special feature or certain forms of that special feature could impair the contracting carrier's common carrier obligation and how that impairment may affect the petitioner. On receiving such a petition, the carrier must furnish to the petitioner and the Commission the data required by § 1313.10(b)(6)(i)(D).

§ 1313.16 Procedures for contract discovery and complaints.

(a) *Complaints, discovery petitions, replies, and appeals.* (1) Discovery petitions and/or skeletal complaints must be filed no later than the 18th day after the contract and summary are properly filed.

(2) Petitions must note on the front page "Petition for Discovery of Rail Contract" and note the contract and amendment numbers.

(3) A skeletal complaint as required under paragraph (b) of this section must accompany the petition.

(4) Petitioner must certify that 2 copies of the petition and complaint have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Commission. The contracting carrier shall in turn serve the contracting shipper with a copy of the petition and complaint. Replies shall be served in the same manner on complainant/petitioner.

(5) Replies to the petition are due within 5 days from the date of filing of the petition and in no event later than noon on the 23rd day following filing of the contract.

(6) An original and 10 copies of the petition, skeletal complaint and replies plus 2 transmittal letters must be filed with the Commission in an envelope labeled "Suspension/Special Permission Board—Confidential Contract Material."

(7) An appeal of a Suspension/Special Permission Board's decision must be made in accordance with 49 CFR 1132.2, subject to the following:

(i) An appeal must be received within 2 days of the Board's decision (anticipated by day 26 after the contract filing date), but in no event later than the 28th day after the contract filing date.

(ii) The appeal shall be filed with the Suspension/Special Permission Board for handling and will be considered by the entire Commission.

(iii) Telegraphic notice or its equivalent must be given to the opposing party.

(iv) Replies to the appeal must be received within one day after the appeal is filed.

(v) The number of copies of appeals and replies required is the same as provided in paragraphs (a) (4) and (6) of this section.

(8) *Protective order.* If confidential contract data or data disclosed pursuant to §§ 1313.15, 1313.16, or 1313.17 are filed with the Commission in a complaint, petition, reply or other pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (a)(9) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Commission or through informal discovery.

(9) *Order.* Petitioner and carriers, and their duly authorized agents agree to limit to the discovery/complaint proceeding involving the contract, the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or any other pleading relating to the contract. This agreement shall be a condition to release of any contract term by a petitioner/complainant and shall operate similarly on a carrier in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract, or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: consultants or agents who agree, in writing, to be bound by this regulation; information which is publicly available; information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and